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EXAMINER	
WHIPPLE, BRIAN P	
ART UNIT	PAPER NUMBER
2452	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/717,176	NAVAR ET AL.	
	Examiner	Art Unit	
	BRIAN P. WHIPPLE	2452	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 November 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10,14-18 and 30-37* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10,14-18 and 30-37* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-10, 14-18, and 30-37 are pending in this application and presented for examination.

Response to Arguments

2. Applicant's arguments, see page 10, filed 8/27/08, with respect to the objection to claim 12 and 35 U.S.C. 112, second paragraph rejections of claims 14-20 and 26-28, have been fully considered and are persuasive. The objection to claim 12 and 35 U.S.C. 112, second paragraph rejections of claims 14-20 and 26-28 have been withdrawn.

3. Applicant's remaining arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

4. Claim 8 is objected to because of the following informalities: "one or more packets corresponding the specified content" should read "one or more packets corresponding to the specified content." Appropriate correction is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-2, 5-10, 14-15, and 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al. (Jones), U.S. Publication No. 2002/0198930 A1, in view of Adams et al. (Adams), U.S. Publication No. 2002/0046232 A1.

7. As to claim 1, Jones discloses a method for retrieving specified content in a peer-to-peer network (Fig. 4), the method comprising:

checking the availability of specified content (Fig. 4, item 404; [0031], ln. 1-10, a check is made to see if the requested file piece is available from another client in the peer-to-peer network) from other clients (Fig. 4, item 406; [0031], ln. 7-10) in the peer-to-peer network (Fig. 1; [0007], ln. 1-3 and 7-9, "client then functions as a peer-to-peer server and downloads the requested file piece to the second client");

retrieving the specified content from one or more of the other clients in the peer-to-peer network, when the specified content is available from one or more of the other clients in the peer-to-peer network (Fig. 4, item 406; [0031], ln. 7-10); and

retrieving the specified content from a content server in the peer-to-peer network, when the specified content is not identified on the clients (Fig. 4, item 405; [0031], ln. 4-7).

Jones is silent on the availability of the specified content is identified in a list of available content and clients, the list provided to clients in the peer-to-peer network, and wherein the list of available content and clients is periodically updated to reflect a current availability of content and clients.

However, Adams discloses the availability of specified content is identified in a list of available content and clients, the list provided to clients in a peer-to-peer network, and wherein the list of available content and clients is periodically updated to reflect a current availability of content and clients ([0016], ln. 7-10; [0017] – [0022]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Jones by providing the availability of specified content identified in a list of available content and clients, the list provided to clients in a peer-to-peer network, and wherein the list of available content and clients is periodically updated to reflect a current availability of content and clients as taught by Adams in order to enable a user to search for and subsequently download desired files available from clients in a peer-to-peer network.

8. As to claim 2, Jones and Adams disclose the invention substantially as in parent claim 1, wherein retrieving the specified content from the one or more of the other clients (Jones: Fig. 4, item 406; [0031], ln. 7-10) includes:

retrieving a first portion of the specified content from a first other client in the peer-to-peer network (Jones: [0030], ln. 5-11); and

retrieving a second portion of the specified content from a second other client in the peer-to-peer network (Jones: [0033], ln. 2-11), wherein the first and second other clients are both identified on the list of available content and clients (Adams: [0016], ln. 7-10; [0017] – [0022]).

9. As to claim 10, Jones and Adams disclose the invention substantially as in parent claim 2, further comprising determining that a retrieved portion of the specified content is corrupted (Jones: [0035], ln. 3-8, "the clients can accurately tell if any of the peer-to-peer servers have corrupted their respective file pieces");

retrieving an uncorrupted portion of the specified content from another source in the peer-to-peer network (Jones: [0037], ln. 4-12, "the master server can then retransmit the necessary file piece"), the another source identified on the list of available content and clients (Adams: [0016], ln. 7-10; [0017] – [0022]).

10. As to claim 5, Jones and Adams disclose the invention substantially as in parent claim 1, wherein the specified content includes audio content (Adams: [0008]).

11. As to claim 6, Jones and Adams disclose the invention substantially as in parent claim 1, wherein the specified content includes video content (Adams: [0008]).

12. As to claim 7, Jones and Adams disclose the invention substantially as in parent claim 1, wherein the specified content includes a static item of content (Adams: [0008]).

13. As to claim 8, Jones and Adams disclose the invention substantially as in parent claim 1, wherein retrieval of the specified content includes retrieval of a header associated with one or more packets corresponding the specified content (Jones: [0031], ln. 7-10; in order to redirect the client to a peer-to-peer server, a destination address of peer-to-peer server must be known, destination addresses are known to be contained in the header of packets), the header including information identifying the one or more packets (Jones: [0031], ln. 7-10; headers are known to contain an identification field; in order to identify the content to be downloaded from the peer-to-peer server by the client, the master server must not only identify the destination address of the peer-to-peer server, it must also identify the content to be downloaded from the peer-to-peer server).

14. As to claim 9, Jones and Adams disclose the invention substantially as in parent claim 8, further comprising repeating retrieval of corrupted packets from the one or more packets corresponding to the specified content (Jones: [0037], ln. 4-12, "the client can determine which piece of the file needs to be retransmitted").

15. As to claims 14 and 36-37, the claims are rejected for reasons similar to claim 1 above.

16. As to claim 15, Jones and Adams disclose the invention substantially as in parent claim 14, wherein the information includes content sources ranked by priority (Jones: [0031]).

17. Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones and Adams as applied to claim 1 above, further in view of Pitkin et al. (Pitkin), U.S. Patent No. 5,341,477, and further in view of O'Toole, Jr. (O'Toole), U.S. Patent No. 7,320,131 B1.

18. As to claim 3, Jones and Adams disclose the invention substantially as in parent claim 1, but are silent on a content broker selects the content server based on a cost associated with the content server.

However, Pitkin discloses a content broken selects a content server (Abstract, ln. 1-4 and 9-13, "available resource capacity").

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Jones and Adams by including a content server to select a content server as taught by Pitkin in order to suggest the best server based on network policy and available resource capacity (Pitkin: Abstract, ln. 9-13).

Jones, Adams, and Pitkin are silent on selecting a content server based on a cost associated with the content server.

However, O'Toole discloses selecting a content server based on a cost associated with the content server (Abstract, ln. 3-11; Col. 6, ln. 59-62).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Jones, Adams, and Pitkin by selecting a content server based on a cost associated with the content server as taught by O'Toole in order to choose servers that can handle requests in a cost-efficient manner (O'Toole: Col. 6, ln. 59-62).

19. As to claim 16, the claim is rejected for reasons similar to claims 3 and 15 above.

20. Claims 4 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones and Adams as applied to claims 1 and 15 above, further in view of Hu, U.S. Patent No. 6,173,322 B1.

21. As to claim 4, Jones and Adams disclose the invention substantially as in parent claim 1, wherein a master server selects a peer-to-peer server based on availability (Jones: [0034], ln. 3-13), but are silent on a content broker selects the content server based on the bandwidth availability of the content server.

However, Hu discloses a content broker selects a content server based on the bandwidth availability of the content server (Col. 17, claim 7).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Jones and Adams by including a content server to select a content server based on the bandwidth availability of the content server as taught Hu by in order to suggest the best server based on available bandwidth.

22. As to claim 17, the claim is rejected for reasons similar to claims 4 and 15 above.

23. Claims 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones and Adams as applied to claim 1 above above, and further in view of McCleskey et al. (McCleskey), U.S. Publication No. 2005/0021398 A1.

24. As to claim 30, Jones and Adams disclose the invention substantially as in parent claim 1, but are silent on acquiring a license for the specified content.

However, McCleskey discloses acquiring a license for specified content ([0188]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Jones and Adams by acquiring a license for specified content as taught by McCleskey in order to promote legal file sharing and P2P file transfers (McCleskey: [0188], ln. 17).

25. As to claim 31, Jones, Adams, and McCleskey disclose the invention substantially as in parent claim 30, further comprising authenticating a requesting user prior to granting access to the list of available content and clients (Adams: [0042]).

26. As to claim 32, the claim is rejected for reasons similar to claim 31 above.

27. As to claim 33, the claim is rejected for reasons similar to claim 30 above.

28. As to claim 34, the claim is rejected for reasons similar to claims 1 and 30-31 above.

29. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones and Adams as applied to claim 15 above, further in view of Ishida et al. (Ishida), U.S. Publication No. 2002/0116479 A1.

30. As to claim 18, Jones and Adams disclose the invention substantially as in parent claim 15, but are silent on a priority ranking that varies over time of day.

However, Ishida discloses a priority ranking (Abstract, ln. 4-6; Fig. 3, "HIGH-LEVEL SERVERS" and "GENERAL-LEVEL SERVERS") that varies over time of day ([0104], ln. 1-8). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Jones and Adams by varying a priority ranking over time of day as taught by Ishida in order to balance the loads of servers of different levels in proportion to the number of corresponding requests for each level ([0104], ln. 1-8; [0105], ln. 4-6 and 10-15).

31. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones, Adams, and McCleskey as applied to claim 34 above, and further in view of Hu.

32. As to claim 35, the claim is rejected for reasons similar to claim 3 above.

Conclusion

33. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

34. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN P. WHIPPLE whose telephone number is (571)270-1244. The examiner can normally be reached on Mon-Fri (9:30 AM to 6:00 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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